

REMARKS

The previously submitted "CROSS-REFERENCE TO RELATED APPLICATIONS" paragraph has been replaced with a new "CROSS-REFERENCE TO RELATED APPLICATIONS" paragraph in which the status of priority application 09/062,597 is shown as abandoned. Furthermore, priority application 09/646,561 is now issued as Patent No. 6,852,847.

Claims 65-68 have been canceled.

Claims 69 and 75 have been amended to specify the encoded protein be capable of co-stimulating canine T-cells in the presence of an antigenic peptide. Support for these claims can be found in the specification, for example, on page 1, lines 11-24.

Claims 72 and 78 have been amended to specify the claimed composition regulate T-cells in a canid. Support for this amendment can be found in the specification, for example, on page 39, lines 26-31, through page 40, lines 1-16.

Accordingly, Applicants contend no new matter has been entered into the specification.

Absence of co-inventor Sim's signature from Declaration

Co-inventor Gek-Kee Sim has been found to be non-cooperative in parent application 09/646,561, and in other related cases, as evidenced by the previously submitted copy of Decision on Renewed Petition Under 37 CFR 1.47(a), accepting parent application 09/646,561 without co-inventor Sim's signature. As requested by the Examiner, Applicants have attached a copy of the petition under 37 CFR 1.47(a) filed with application 09/646,561. Additionally, Applicants have attached a copy of the USPTO Decision accepting the parent application without the signature of co-inventor Gek-Kee Sim along with a copy of a letter sent from the USPTO to co-inventor Gek-Kee Sim informing her of her status as a named inventor. Finally, Applicants have attached a copy of a Declaration of Timothy McCutcheon which details attempts made by Mr. McCutcheon to reach co-inventor Sim.

Declaration

Applicants are still in the process of obtaining a new Oath or Declaration signed by co-inventor Shumin Yang and co-inventor Karen S. Sellins, and will submit this Supplemental Oath or Declaration as soon as the signed copy is received from the inventors.

Information Disclosure Statement

The Examiner has stated that only three of the 43 references listed on the instant PTO-1449 have been cited in the priority application and has invited Applicants to submit the missing references to complete the file. Applicants note the missing references were supplied in the parent case. Applicants believe that the fact these cases are not of record is an oversight on the part of the USPTO. However, in an effort to speed prosecution, Applicants are submitting herewith a copy of the IDS along with a copy of all of the references cited therein.

Rejections Under 35 U.S.C. §112, first paragraph – enablement

The Examiner has rejected Claims 66-67, 72-73 and 78-79 stating that the specification, while being enabling for a composition which regulates T-cell mediated immune responses in canids, does not enable a composition which regulates T-cell mediated immune responses in non-human animals.

Applicants note Claims 66-67 have been canceled. Additionally, Claims 72-73 and 78-79 have been amended to limit the regulatory activity of the claimed composition to canids, which the Examiner acknowledges is enabled by the specification. In view of these amendments, Applicants requests withdrawal of this rejection.

The Examiner has rejected Claims 65-80 stating that while the specification enables a canine B7-2 protein capable of co-stimulating T-cells, it does not enable a canine B7-2 protein capable of stimulating T-cells.

Applicants note Claims 65-68 have been canceled. Additionally, Claims 69 and 75 have been amended to specify that the encoded proteins be capable of co-stimulating canine T-cells in the presence of an antigenic peptide. The Examiner has acknowledged that the specification is enabling for such activity and, therefore, Applicants request withdrawal of this rejection.

Rejections Under 35 U.S.C. §112, first paragraph – written description

The Examiner has rejected claims 66-67, 72-73 and 78-79 stating that the Applicants is in possession of a composition which regulates T-cell mediated responses in canids, but is not in possession of a composition which regulates T-cell mediated responses in non-human animals.

Applicants note Claims 66-67 have been canceled. Additionally, Claims 72-73 and 78-79 have been amended to limit the T-cell regulatory activity of the claimed compositions to canids. Therefore, Applicants request withdrawal of this rejection.

Rejections Under 35 U.S.C. 103(a)

The Examiner has rejected Claims 65-68 as being unpatentable over Pinelli in view of US Patent 6,084,067. Specifically the Examiner states Pinelli teaches B7-2 proteins are present on the surface of macrophages isolated from beagle dogs. The Examiner further states that while Pinelli does not teach isolated B7-2 proteins, US patent 6,084,067 teaches isolated human B7-2 proteins and that compositions comprising such proteins are useful for therapeutically regulating immune responses. The Examiner therefore concludes it would have been obvious to one of skill in the art to apply the teachings of the '067 Patent to those of Pinelli to obtain the claimed invention.

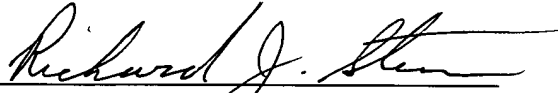
While Applicants respectfully disagree with the Examiner's conclusion, in the interest of expediting prosecution, Applicants have canceled Claims 65-68, rendering the rejections under 103(a) moot.

CONCLUSION

Applicants believe the current claim set to be in condition for allowance and solicit such from the Examiner. If there are any questions, the Examiner is invited to contact the undersigned at (970) 493-7272 ext. 4174.

Respectfully submitted,

Dated: August 1, 2005

By: 
Richard J. Stern, Ph.D.
Registration No. 50,668
Heska Corporation
3760 Rocky Mountain Avenue
Loveland, Colorado 80538
Telephone: (970) 493-7272
Facsimile: (970) 619-3011

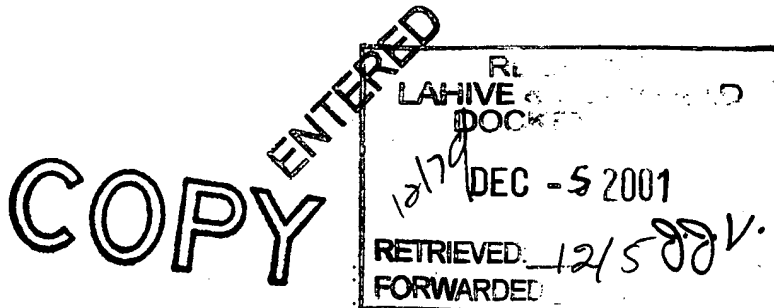
NOV 29 2001



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Elizabeth A. Hanley
LaHive & Cockfield, LLP
28 State Street
Boston, MA 02109



In re Application of
Gek-Kee Sim et al.
Application No.: 09/646,561
PCT No.: PCT/US99/06187
Int. Filing Date: 19 March 1999
Priority Date: 19 March 1998
Attorney's Docket No.: HKZ-029CPUS
For: T CELL COSTIMULATORY PROTEINS,
SEQUENCES AND USES THEREOF

DECISION ON
RENEWED PETITION
UNDER 37 CFR 1.47(a)

This is a decision in response to the declaration and renewed petition filed under 37 CFR 1.47(a) on 17 September 2001, to accept the application without the signature of co-inventor Gee-Kee Sim. The required \$130 petition fee has been received.

BACKGROUND

On 19 March 1999, applicants filed international application PCT/US99/06187, which claimed priority of an earlier US application filed 17 April 1998 and an earlier provisional application filed 19 March 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from applicant on 19 September 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 19 October 1999. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 19 September 2000.

On 19 September 2000, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c).

On 01 November 2000, the United States Designated/Elected Office mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/EO/EO905), indicating that an oath or declaration and the surcharge for filing the oath or declaration later than 30 months from the priority date as required by 37 CFR 1.492(e) needed to be filed. The notification set a one month time period in which to respond.

On 01 February 2001, applicant filed a response to the PCT/DO/EO/905 including a petition under 37 CFR 1.47 (a) and the required petition fee, and the required surcharge for filing the declaration later than 30 months from the earliest priority date.

A decision of the petition was mailed to applicant on 17 May 2001 indicating that before a refusal to sign a declaration can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application.

On 17 September 2001, applicant filed the current Renewed Petition under 37 CFR 1.47(a) and a \$130 fee; the declaration of Timothy McCutcheon including various exhibits; the unexecuted declaration, petition and power of attorney; a request for a two-month extension of time and the required fee; and, a petition to revive and the appropriate fee.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

With respect to item (1), the \$130 petition fee under 37 CFR 1.17(h) was included with the original petition. Therefore, no additional fee is due. The enclosed \$130 fee will be refunded to applicant's deposit account.

With respect to item (2), Mr. Timothy McCutcheon states that he left various email and voice messages on Dr. Sim's telephone. Dr. Sim did not respond to any of the messages. Further, on 26 July 2001, Mr. McCutcheon sent Dr. Sim, by Federal Express, a spiral bound copy of the application as well as the assignment and declaration. On 27 July 2001, G. Sim signed for this package as evidenced by the "Track Response."

With respect to item (3), Dr. Sim's last known address is furnished in Mr. McCutcheon's declaration.

Regarding item (4), applicants included a Declaration signed by two of the three co-inventors with the original petition. The nonsigning co-inventor's name, residence, post office address and citizenship are typed on the declaration. This declaration satisfies the requirements of section 409.03(a) of the Manual of Patent Examining Procedure (MPEP) and is in compliance with 37 CFR 1.497(a) and (b). Thus, item (4) has been satisfied.

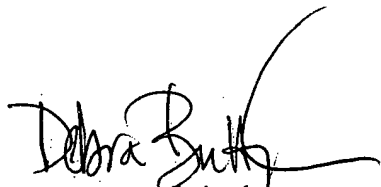
With respect to applicant's petition to revive, no such petition is necessary. Therefore, the fee of \$620 will be refunded to applicant's deposit account.

CONCLUSION

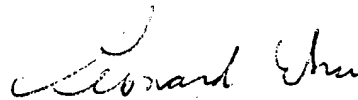
The petition under 37 CFR 1.47(a) is GRANTED.

Applicant's **DEPOSIT ACCOUNT 12-0080** will be refunded \$750.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision; and, if appropriate, a Notification of Acceptance of Application (Form PCT/DO/EO/903) will be mailed showing a 35 U.S.C. 371 date of 01 February 2001.



Debra S. Brittingham
PCT Special Programs Examiner
PCT Legal Office



Leonard Smith
PCT Legal Examiner
PCT Legal Office

DSB/LS:dsb

Telephone: (703) 308-3401

Facsimile: (703) 308-6459

NOV 29 2001



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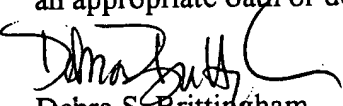
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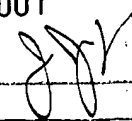
In re Application of
Gee-Kee Sim et al.
Application No.: 09/646,561
PCT No.: PCT/US99/06187
Int. Filing Date: 19 March 1999
Priority Date: 19 March 1998
Attorney's Docket No.: HKZ-029CPUS
For: T CELL COSTIMULATORY PROTEINS,
SEQUENCES AND USES THEREOF

Dear Dr. Sim:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.


Debra S. Brittingham
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-3401
Facsimile: (703) 308-6459

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12/1 DEC -3 2001
RETRIEVED: 12/3
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of: Gek-Kee Sim et al.

Serial No.: 09/646,561

Filing Date: September 19, 2000

International Filing Date: March 19, 1999

For: T CELL COSTIMULATORY PROTEINS.
SEQUENCES AND USES THEREOF

Attorney Docket No.: HKZ-029CPUS

Group Art Unit: N/A

Examiner: N/A

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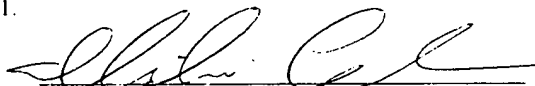
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Flidio P. Cardoso

Name of Person Mailing Paper



Signature of Person Mailing Paper

COMBINED RENEWED PETITION PURSUANT TO 37 CFR § 1.47(a)

and

PETITION TO REVIVE AN ABANDONED APPLICATION

PURSUANT TO 37 CFR §1.137(b)

Dear Sir:

Applicants hereby renew their Petition pursuant to 37 CFR §1.47(a) for acceptance of the enclosed Declaration for Patent Application when one of the co-inventors, Gek-Kee Sim, refuses to sign or cannot be reached. Applicants' first Petition pursuant to 37 CFR §1.47(a), filed on February 1, 2001, was dismissed in a decision dated May 17, 2001. A request for the appropriate extension of time pursuant to 37 CFR 1.136(a) and appropriate fees are being filed herewith.

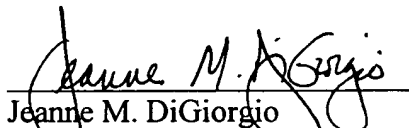
In the event that Applicants' Renewed Petition Pursuant to 37 CFR §1.47(a) is denied, Applicants hereby alternatively petition, pursuant to 37 CFR 1.137(b), to revive the above-referenced application which will have become unintentionally abandoned. Enclosed is the fee set forth in 37 CFR §1.17(m) based on small entity status.

Accordingly, it is respectfully requested that the above-identified application be revived from abandonment. A response to the outstanding Notification of Missing Requirements under 35 U.S.C. §371 (mailed from the Patent Office on November 1, 2000) is being filed concurrently herewith. It is respectfully submitted that the entire delay in filing the response from the due date for the response until the filing of this petition was unintentional.

In particular, Applicants submit herewith the unexecuted Declaration of the nonsigning co-inventor, Gek-Kee Sim, along with a separate Declaration of Timothy McCutcheon stating that the nonsigning co-inventor refuses to sign the Declaration. The executed Declarations of the other two co-inventors have been previously submitted. As disclosed in the attached Declaration of Timothy McCutcheon and the accompanying documentary evidence, diligent efforts have been made to present a copy of the application papers to the non-signing inventor, Dr. Sim. Despite multiple attempts to reach Dr. Sim by email messages and telephone messages to arrange a meeting to discuss the above-referenced application and despite the mailing of the above-referenced application and related documents to Dr. Sim at her last known address, Applicants have received no response. Accordingly, Applicants conclude that Dr. Sim either refuses to sign or cannot be reached.

Respectfully submitted,

LAHIVE & COCKFIELD, LLP


Jeanne M. DiGiorgio
Reg. No. 41,710
Attorney for Applicants

28 State Street
Boston, MA 02109
tel: (617) 227-7400
fax: (617) 742-4214

Date: September 17, 2001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of: Gek-Kee Sim et al.

Serial No.: 09/646,561

Filing Date: September 19, 2000

International Filing Date: March 19, 1999

For: T CELL COSTIMULATORY PROTEINS,
SEQUENCES AND USES THEREOF


Attorney Docket No.: HKZ-029CPUS

Group Art Unit: N/A

Examiner: N/A

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CERTIFICATE OF EXPRESS MAIL	
Date of Deposit: <u>September 17, 2001</u>	Express Mail Label No.: <u>EL 745 889515 US</u>
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<u>Filippo P. Cordusi</u>	
Name of Person Mailing Paper	Signature of Person Mailing Paper

DECLARATION OF TIMOTHY McCUTCHEON

Dear Sir:

I, Timothy McCutcheon, declare the following:

1. I am a patent attorney in the Intellectual Property Department of Heska Corporation, Assignee of the above-referenced patent application.
2. Gek-Kee Sim is a co-inventor of the above-referenced patent application and a former employee of Heska Corporation.
3. Dr. Sim was an employee at Heska Corporation from February 1, 1996 through August 25, 1998. The last known official addresses for Dr. Sim which Heska Corporation has on file are (1) 543 Franklin Street, Denver, CO 80218 and (2) simgk@aol.com. Heska Corporation also has a telephone number on file for Dr. Sim.

4. On July 13, 2001, I sent an email message to Dr. Sim informing her of my upcoming trip to Denver and asking her to meet me to review the above-referenced application and execute the related documents. A copy of this email is attached as Exhibit A.

5. The message described in paragraph 3 was also left as a voice message on the answering machine of Dr. Sim's telephone.

6. On July 17, 2001, I sent additional voice and email messages to Dr. Sim asking her to meet me during my trip to Denver to review the above-referenced application and execute the related documents. A sample copy of these messages is attached as Exhibit B.

7. On July 26, 2001, I sent a letter by Federal Express which was signed by Carol Talkington Verser (patent agent for the above-referenced application) and addressed to Dr. Sim at her last known address listed in paragraph 2 (above). Enclosed with this letter was a spiral-bound copy of the above-referenced application as filed and the Assignment and Declaration documents related to this application. This letter requested Dr. Sim to execute the enclosed documents and return them to Heska Corporation. A copy of this letter, its Federal Express airbill, and the Federal Express "Track Response" printout dated July 30, 2001, indicating that the package was received and signed for by G. Sim on July 27, 2001, are attached as Exhibit C.

8. On July 26, 2001, I sent another email message to Dr. Sim alerting her to the package mailed to her on the same day, described in paragraph 7 (above), and requesting her to contact me. A copy of the email is attached as Exhibit D.

9. On August 28, 2001, I left another voicemail message for Dr. Sim requesting that she sign the documents as soon as possible and certainly no later than September 7, 2001.

10. I have not received any response from Dr. Sim. Also, I do not know of anyone else at Heska Corporation who has received a response from Dr. Sim pertaining to the above-referenced application.

I have been warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the subject application or any patent resulting therefrom. I declare that all of the foregoing statements made of my own knowledge are true and that all statements made on information and belief are believed to be true.

Date: 9-14-01

Signed: Timothy L. McCutcheon
Timothy L. McCutcheon

EXHIBIT A

McCutcheon, Timothy

From: McCutcheon, Timothy
Sent: Friday, July 13, 2001 10:15 AM
To: 'simgk@aol.com'
Subject: Meet to sign patent documents?

Hello Gek Kee,

This is Tim McCutcheon in the IP department at Haska.

Carol has some documents relating to the patent covering T Cell Costimulatory proteins that she would like signed and I happen to be coming to Denver for meetings on both Wednesday and Friday next week. Carol will also be in Denver on Friday next week. We were wondering if you are available to meet with one of us on Wednesday or Friday. We'll be downtown, but we could meet wherever it is convenient for you. Early afternoon would probably be best for me, I think Carol may be more flexible with respect to time if you were to meet with her on Friday.

The documents are just the standard Declaration and Power of Attorney documents that are signed in all patent cases. We would also bring a copy of the complete patent specification and claims for your records.

I don't know how often you check your e-mail, so I'll also leave you a message on your answering machine.

Thanks

Tim

McCutcheon, Timothy

from: McCutcheon, Timothy
sent: Tuesday, July 17, 2001 10:41 AM
to: 'simgk@aol.com'
subject: Meeting in Denver

Hello again Gek Kee,

I haven't heard back from you on the phone messages I've left. Since it's not your voice on the machine, I hope I have the correct number.

I'm just continuing to try to reach you to see if you can meet with me on Wednesday or with Carol on Friday in Denver to sign some routine patent documents.

Thanks

Tim

deX. USA Airbill

FedEx
Tracking
Number

800700120186

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7/26/01 Sender's FedEx Account Number 1240-2891-4

Carol Talkington Verser, PhD Phone (970) 493-7272

HESKA CORP

1613 PROSPECT PARKWAY

Dept./Floor/Suite/Room

FORT COLLINS State CO ZIP 80525-9769

or Internet Billing Reference Information 1410-1900 and 3791-07

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Gek-kee Sim PhD Phone (303) 321-8595

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Denver State CO ZIP 80218

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4b Express Freight Service Packages over 150 lbs. Delivery commitment only on 1st business day.
☐ FedEx Overnight Freight (Next business day) ☐ FedEx 2Day Freight (Second business day) ☐ FedEx Express Saver Freight (Up to 3 business days)

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5 Packaging ☐ FedEx Letter ☒ FedEx Pak ☐ FedEx Box ☐ FedEx Tube ☐ Other
Declared value limit \$500.

6 Special Handling Does this shipment contain dangerous goods? ☐ Yes (See our label requirements) ☐ No (Shipper's Declaration not required)
☐ Dry Ice (Dry Ice, 9, 10, and 11 (Dangerous Goods Shipper's Declaration not required) by 901 CA Cargo Aircraft Only

7 Payment ☒ Sender (Account only) ☐ Recipient (Cash/FedEx account no. or Credit Card no. below) ☐ Third Party ☐ Credit Card ☐ Cash/Check

FedEx Account No. 1240-2891-4 Exp. Date
Credit Card No. _____
Total Packages Total Weight Total Declared Value \$0.00 Total Charges

*When declaring a value higher than \$500 per shipment, you pay an additional charge. See SERVICE CONDITIONS, DECLARED VALUE, AND LIMIT OF LIABILITY on back for further information.

3 Release Signature Sign to authorize delivery without obtaining signature.

Your signature authorizes Federal Express to deliver this shipment without obtaining a signature and agrees to indemnify and hold harmless Federal Express from any resulting claims.

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WCSL 5707
Rev. 05/94
Form 510004
01/94-07 FedEx

Track Package

IM-1-CF-PUS

Track Response

e: 07/30/2001 Time: 04:18:22 PM

*
Reference Number Type: AW
Reference Number: 800700120186
Status Code: D
Status: Delivered
Origin City: DENVER
Origin State: CO
Origin Country:
Status Date: 20010727 091600
Delivery Required By:
Ship Date: 20010726 162000
Estimated Delivery Date:
Delivered On: 20010727 091600
DI Date:
Assignee: CN
Shipper:
Service Level:
Service Description:
Signed By: G.SIMMS
Trace By Type: AW
Trace By Reference: 800700120186
Weight:
Weight Qualifier Code:
Weight Qualifier:
Weight Unit Code:
Weight Unit:
Origin City:
Origin State:
Origin Country:
Destination City:
Destination State:
Destination Country:



HESKA

1613 Prospect Parkway
Fort Collins, CO 80525
(t) 970-493-7272
(f) 970-493-7333
www.heska.com

July 26, 2001

Via Federal Express

Gek-Kee Sim, Ph.D.
543 Franklin Street
Denver, Colorado 80218

RE: U.S. Application Serial No. 09/646,561, filed 19 September 2000, entitled
"T CELL COSTIMULATORY PROTEINS, SEQUENCES AND USES
THEREOF"
Our File No. IM-1-C1-PUS ✓

Dear Gek-Kee:

Please find enclosed a spiral-bound copy of the above-referenced application as filed. This application claims priority to the PCT application, which was filed in March of 1999.

Also enclosed is an "Assignment" and a "Declaration, Petition and Power of Attorney for Patent Application" for signature by you as an inventor of the above-referenced patent application. These documents were sent to us by Lahive & Cockfield, who is handling prosecution of this application. We would appreciate it if you would sign and date these documents and return them to us in the attached Federal Express package at your earliest convenience. If you need to make a correction to your name or address, please cross through the wrong items, print the correct information and initial the change. Also, if you can, please have signature notarized on the Assignment. If you have any questions, please feel free to call me. Thank you.

Sincerely,

Carol Talkington Verser, Ph.D.
Executive Vice President
Intellectual Property and Business Development

Encls.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of: Gek-Kee Sim, et al..

Serial No.: 09/646,561

Filing Date: September 19, 2000

International Filing Date: March 19, 1999

For: T CELL COSTIMULATORY PROTEINS,
SEQUENCES AND USES THEREOF

Attorney Docket No.: HKZ-029CPUS

Group Art Unit: N/A

Examiner: N/A

Commissioner for Patents
Box PCT (EO/DO/US)
Washington, D.C. 20231

REQUEST FOR TWO-MONTH EXTENSION OF TIME

Dear Sir:

Applicants request a two-month extension of time pursuant to 37 CFR 1.136(a) in which to respond to the Decision dated May 17, 2001 to dismiss their Petition pursuant to 37 CFR §1.47(a).

Enclosed is a check which covers the appropriate extension fee of \$195.00 based on small entity status. Please charge any underpayments or credit any overpayments to our Deposit Account No. 12-0080. *A duplicate of this sheet is enclosed.*

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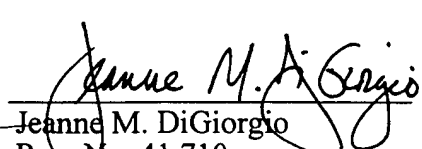
Date of Deposit September 17, 2001

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents, Box PCT (EO/DO/US), Washington, DC 20231


Signature

Ilidio P. Cardoso
Please Print Name of Person Signing

Respectfully submitted,
LAHIVE & COCKFIELD, LLP
Attorneys at Law


Jeanne M. DiGiorgio
Reg. No. 41,710
28 State Street
Boston, MA 02109
617-227-7400

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